JEFFRI ABDULLAH & ORS v. PP

COURT OF APPEAL, PUTRAJAYA
AZIAH ALI JCA
AHMADI ASNAWI JCA
ZAMANI A RAHIM JCA
[CRIMINAL APPEAL NO: K-05-293-12-2013]
26 MAY 2015

CRIMINAL LAW: *Kidnapping Act 1961 – Section 3 – Accused persons jointly charged for kidnapping victim – Whether money demanded amounted to ransom – Victim was free to move – Whether negated element of being wrongfully restrained – Whether victim was under constant fears*

CRIMINAL PROCEDURE: *Charge – Defective charge – Charge incorporating two elements of actus reus – Whether rendered charge defective – Whether accused persons misled or prejudiced – Whether miscarriage of justice occasioned – Whether curable under s. 422 Criminal Procedure Code*

The third appellant was a police officer, and the first and second appellants were civilians who impersonated themselves as police officers. The first, second and third appellants were jointly charged for an offence under s. 3(1) of the Kidnapping Act 1961 ('the Act'), read together with s. 34 of the Penal Code for having arrested and detained SP7, the victim, and demanding ransom from SP7's brothers. SP7 was released upon the payment of the ransom demanded. The appellants, although did not deny that they had arrested, detained SP7 and demanded the sum of RM40,000 from SP7's brothers, contended that the money demanded was not for the release of SP7 from captivity, but was for the settlement of a drug-related matter. The appellants contended that they were demanding 'kowtim' money and not ransom money. At the conclusion of trial, the trial judge found that the defence of the appellants did not raise a reasonable doubt on the prosecution's case and thus convicted the appellants and sentenced them to life imprisonment from the date of conviction and ten strokes of whipping. However, the third appellant was spared from the whipping as he had attained the age of 50 at the time of conviction. Hence, the present appeal. During appeal, the third appellant submitted that the charge was defective and not curable under s. 422 of the Criminal Procedure Code as the charge incorporated two elements of *actus reus* namely, 'menahan' (restraint) and 'melarikan secara salah' (abduct). The appellants argued that they needed to know precisely whether they were facing a charge of abduction or wrongfully restraining SP7. It was also submitted that the Judicial Commissioner ('JC') failed to critically examine the evidence of SP7, as SP7 was a confused and inconsistent witness suggesting that he was not a witness of truth. The evidence of SP7 himself showed that he was not restrained but was free to

A move. The issues that arose for the court's determination, *inter alia*, were (i) whether the charge was defective; (ii) whether SP7 was arrested, detained and restrained; and (iii) whether the money demanded amounted to a ransom.

Held (dismissing appeal; affirming conviction and sentence)
B **Per Zamani A Rahim JCA delivering the judgment of the court:**

(1) The charge in the instant case was not defective in law as the phrase 'dengan cara melarikan diri secara salah' was merely to explain or provide particulars of the wrongful act of 'restrain'. The appellants were represented by counsel and therefore, they were neither misled,
C prejudiced and no miscarriage of justice had been occasioned against the appellants. (para 17)

(2) Having considered the evidence adduced by the prosecution in totality, including the discrepancies and inconsistencies in the evidence of SP7 on a maximum basis, the JC found SP7's evidence to be credible and
D believable. The discrepancies in the evidence of SP7 were not material or crucial which required the present court to reject the evidence *in toto*. (para 21)

(3) While SP7 was arrested and detained at the back seat of his car by the
E appellants, his hands were handcuffed and his liberty had been wrongfully restrained. However, while he was detained at the hotel and the restaurant, although he was not handcuffed, he did not escape because he was in constant fear and he was under the impression that the appellants were police officers. (paras 22, 24 & 25)

F **(4)** The term 'kowtim money' could not exonerate the appellants from the crime of abduction for ransom. There is nothing in the definition of ransom in s. 2 of the Act which excludes 'kowtim money' from qualifying as payment of ransom. The appellants' act still fell squarely within s. 3(1) of the Act. (paras 29 & 30)

G **(5)** There was no merit in the third appellant's argument that the he did not commit wrongful restraint on SP7 as he was an officer who had the authority to detain a person under the law. The third appellant could not be clothed with authority as he and his comrades had committed the crime of abduction of SP7 for ransom in furtherance of their common
H intention under s. 34 of the PC. (para 31)

Bahasa Malaysia *Translation Of Headnotes*

Perayu ketiga merupakan seorang pegawai polis, dan perayu pertama dan kedua merupakan orang awam yang menyamar sebagai pegawai polis. Perayu
I pertama, kedua dan ketiga telah dipertuduh secara bersesama bagi kesalahan di bawah s. 3(1) Akta Culik 1961 ('Akta'), dibaca bersama-sama dengan

s. 34 Kanun Keseksaan ('KK') kerana telah menangkap dan menahan SP7, mangsa, dan menuntut wang tebusan daripada abang-abang SP7. SP7 telah dibebaskan setelah wang tebusan tersebut dibayar. Perayu-perayu, walaupun tidak menafikan bahawa mereka telah menangkap, menahan SP7 dan menuntut sejumlah RM40,000 daripada abang-abang SP7, menghujahkan bahawa mereka telah meminta wang 'kowtim' dan bukannya wang tebusan. Di akhir perbicaraan, hakim bicara telah membuat dapatan bahawa pembelaan perayu-perayu tidak menimbulkan keraguan yang munasabah terhadap kes pendakwaan dan oleh itu, menyabitkan perayu-perayu dan menjatuhkan hukuman penjara seumur hidup dari tarikh sabitan dan sepuluh kali sebatan. Walau bagaimanapun, perayu ketiga dikecualikan daripada hukuman sebatan kerana telah mencapai umur 50 tahun pada tarikh sabitan. Oleh itu, rayuan ini. Dalam rayuannya, perayu ketiga telah menghujahkan bahawa pertuduhan adalah cacat dan tidak boleh diperbetulkan di bawah s. 422 Kanun Tatacara Jenayah kerana pertuduhan tersebut mengandungi dua elemen *actus reus* iaitu, 'menahan' and 'melarikan secara salah'. Perayu-perayu menghujahkan bahawa mereka perlu mengetahui dengan tepat sama ada mereka menghadapi tuduhan penculikan atau melarikan SP7 secara salah. Dihujahkan juga bahawa Pesuruhjaya Kehakiman ('PK') gagal menilai keterangan SP7 dengan mendalam, kerana SP7 merupakan seorang saksi yang terkeliru dan tidak konsisten, oleh itu, mencadangkan bahawa dia bukan seorang saksi yang benar. Keterangan SP7 sendiri menunjukkan bahawa dia tidak dihalang tetapi bebas untuk bergerak. Isu-isu yang timbul untuk pertimbangan mahkamah, antara lain, adalah (i) sama ada pertuduhan adalah cacat; (ii) sama ada SP7 telah ditangkap, ditahan dan dihalang; dan (iii) sama ada wang yang dituntut adalah wang tebusan.

Diputuskan (menolak rayuan; mengesahkan sabitan dan hukuman)
Oleh Zamani A Rahim HMR menyampaikan penghakiman mahkamah:

(1) Pertuduhan dalam kes ini tidak cacat dari segi undang-undang kerana frasa 'dengan cara melarikan diri secara salah' adalah semata-mata untuk menerangkan atau memberikan butir-butir perbuatan 'penahanan' secara salah. Perayu-perayu telah diwakili oleh peguam dan oleh itu mereka tidak terkeliru, tidak diprejudis dan tiada ketidakadilan diakibatkan kepada perayu.

(2) Setelah mempertimbangkan keterangan yang dikemukakan oleh pihak pendakwaan secara menyeluruh, termasuk percanggahan dan ketidak konsistenan keterangan SP7 secara maksimum, PK membuat dapatan bahawa keterangan SP7 sebagai kredibel dan boleh dipercayai. Percanggahan dalam keterangan SP7 tidak material atau penting yang mewajarkan mahkamah ini menolak keterangan tersebut secara mutlak.

(3) Semasa SP7 ditangkap dan ditahan di tempat duduk belakang keretanya oleh perayu-perayu, tangannya telah digari dan kebebasanya telah dihalang secara salah. Walau bagaimanapun, semasa ditahan di hotel dan di restoran, walaupun pergerakan SP7 tidak dihalang, dia tidak melarikan diri kerana berada dalam ketakutan yang berterusan dan di bawah anggapan bahawa perayu-perayu merupakan pegawai polis.

(4) Istilah 'wang kowtim' tidak dapat melepaskan perayu-perayu daripada jenayah penculikan untuk tebusan. Tiada apa-apa dalam takrif tebusan dalam s. 2 Akta yang mengecualikan 'wang kowtim' sebagai bayaran wang tebusan. Perbuatan perayu-perayu masih terangkum dalam s. 3(1) Akta.

(5) Tiada merit dalam hujahan perayu ketiga bahawa dia tidak melakukan penahanan secara salah terhadap SP7 kerana perayu ketiga adalah seorang pegawai polis yang mempunyai kuasa untuk menahan seseorang di bawah undang-undang. Perayu ketiga tidak dapat diselindungi dengan kuasa kerana perayu ketiga dan rakan-rakannya telah melakukan jenayah penculikan SP7 untuk tebusan dalam mencapai niat bersama mereka di bawah s. 34 KK.

Case(s) referred to:
Goh Keat Peng v. PP [2001] 2 CLJ 498 HC ***(refd)***
Lee Kwai Heong & Anor v. PP [2006] 1 CLJ 1043 CA ***(refd)***
PP v. Datuk Haji Harun Haji Idris (No 2) [1976] 1 LNS 184 ***(refd)***
PP v. Selvarajah s/o Satippan [2004] 3 SLR 615 ***(refd)***
Sabarudin Non v. PP & Other Appeals [2005] 1 CLJ 466 CA ***(refd)***
Sukhvinder Singh Naldip Singh v. PP & Another Appeal [2014] 5 CLJ 574 CA ***(refd)***

Legislation referred to:
Criminal Procedure Code, s. 422
Kidnapping Act 1961, ss. 2, 3(1)
Penal Code, s. 34

For the 1st & 2nd appellants - KT Jayaraj; M/s T Jayaraj & Co
For the 3rd appellant - C Vignesh Kumar; M/s Low, Vignesh & Co
For the prosecution - Tengku Intan Suraya Tengku Ismail; DPP

[Appeal from High Court, Alor Setar; Criminal Trial No: 45C-27-05-2012]

Reported by Sandra Gabriel

JUDGMENT

Zamani A Rahim JCA:

Introduction

[1] Jeffri bin Abdullah (first appellant), Mohamad Shukri bin Ibrahim (second appellant) and Mat Rani bin Zakaria (third appellant) were jointly charged for an offence under s. 3(1) of the Kidnapping Act 1961 (the Act), read together with s. 34 of the Penal Code. The charge reads as follows:

Bahawa kamu bersama-sama pada 15 Mac 2012 jam lebih kurang 12.00 tengahari di hadapan Hotel Akasia, Bedong, di dalam daerah Kuala Muda, dalam Negeri Kedah Darul Aman, dalam mencapai niat bersama kamu bertiga bagi mendapatkan wang tebusan sebanyak RM40,000 telah menahan Zulkifli bin Dahalan, No. K/P: 890124-26-5017 dengan cara melarikan secara salah Zulkifli bin Dahalan. Oleh yang demikian kamu telah melakukan kesalahan dan boleh dihukum di bawah seksyen 3(1) Akta Culik 1961 yang dibaca bersama-sama dengan seksyen 34 Kanun Keseksaan.

The Prosecution's Case

[2] The victim was Zulkifli bin Dahalan (SP7). He hailed from Simpang 3 Sedaka, Jalan Selekoh Yan, Kedah. SP7, Rosli bin Dahalan (SP6) and Mohd Nasir bin Dahalan (SP8) are brothers.

[3] On 15 March 2012, at about 5am, SP7 checked into Hotel Akasia at Bedong. At about 9am, SP7 was about to enter his Gen 2 motorcar bearing registration number PGK 1972, when he was blocked by a Honda Civic motorcar. The second and third appellants rushed out from the Honda Civic and forced SP7 into the Gen 2 motorcar. The second appellant then handcuffed SP7's hands and pushed SP7 into the backseat of the Gen 2. The second appellant drove the Gen 2, whilst the third appellant entered the backseat guarding SP7. The first appellant was driving the Honda Civic, tailing the Gen 2 from behind.

[4] SP7 was taken to Klang where he was detained in a room at Hotel Histana. In the evening, SP7 made a phone call to his brother, SP6 telling SP6 that he was detained by Bukit Aman police and the kidnapper demanded a sum of RM60,000 for his release.

[5] SP6 informed about SP7's captivity to another brother, SP8 who then called the kidnapper. SP8 negotiated the amount demanded and finally he agreed to pay a reduced sum of RM40,000 in return for SP7's release.

[6] Having secured the ransom money, SP8 handed it over to Insp. Najhan (SP9) who recorded the particulars of the same. The money was returned to SP8. On 16 March 2012, SP8 brought the money to Kuala Lumpur with a view to hand it over to the kidnappers.

[7] At Kuala Lumpur, SP8 went to the Shell Petrol station as directed. The said station was located after the Jalan Duta Toll Plaza. There, SP8 met SP7 and the third appellant in the Gen 2. SP8 handed over the money ie, RM40,000 to the third appellant. In response, the third appellant immediately released SP7.

[8] The Gen 2 was then driven northward. It stopped near the Honda Civic when the police team pounced on them. The first, second and third appellants were apprehended. The ransom money of RM40,000 was found in the Gen 2.

A **The Defence**

[9] The first, second and third appellant gave evidence on oath. All the appellants did not deny that they had arrested, detained SP7 and took SP7 to Klang and Kuala Lumpur.

B **[10]** The appellants too did not deny that they demanded the sum of RM40,000 from SP6 and SP8. But the money demanded was not for the release of SP7 from captivity, but it was for the settlement of a drug related matter.

[11] The first, second and third appellants said that they had found the C drugs, Erimin 5 in SP7's motorcar. SP7 was threatened to be taken to Bukit Aman as he was accused of committing a drug offence. The appellants contended that they were demanding "kowtim" money and not ransom money, so that no action would be taken against SP7.

Findings Of The High Court

D

[12] At the conclusion of the trial, the trial judge found that the defence of the first, second and third appellants did not raise a reasonable doubt on the prosecution's case. The money demanded and paid was a ransom money and not a "kowtim" money. The first, second and third appellants were thus convicted and sentenced to life imprisonment from the date of conviction and E ten strokes of whipping. However, the third appellant was spared of the whipping as he had attained the age of 50 years at the time of conviction.

The Appeal

[13] Learned counsel for the third appellant submitted that the charge was F defective and not curable under s. 422 Criminal Procedure Code. The charge incorporated two elements of *actus reus* namely, "menahan" (restraint) and "melarikan secara salah" (abduct). Learned counsel argued that the appellants needed to know precisely whether they were facing a charge of abduction or wrongfully restraining SP7 so that they could properly prepare G their defence: see *Goh Keat Peng v. PP* [2001] 2 CLJ 498. It was also submitted that the learned Judicial Commissioner has failed to critically examine the evidence of SP7, despite the learned Judicial Commissioner acknowledging that the prosecution case primarily rests on the evidence of SP7. The trial judge in his grounds of judgment at p. 309 of appeal record vol. 2 wrote as H follows:

> Saya bersetuju dengan penghujahan peguambela OKT pertama dan OKT kedua bahawa keterangan SP7 adalah keterangan yang amat penting dan kes pihak pendakwa bergantung ke atas keterangannya. Jika keterangan SP7 ini tidak boleh dipercayai, tidak terdapat keterangan lain yang boleh membuktikan kes seperti tuduhan ke atas ketiga-tiga OKT.

I

[14] It was further submitted that SP7 was a confused and an inconsistent witness suggesting that he was not a witness of truth. The evidence of SP7 himself showed that he was not restrained but free to move. The Court of Appeal in the case of *Sukhvinder Singh Naldip Singh v. PP & Another Appeal* [2014] 5 CLJ 574 had set aside the conviction under s. 3 of the Act when it was shown that the victim was indeed not restrained by the accused.

[15] Learned counsel for the first and second appellants submitted that the learned Judicial Commissioner had erred when he concluded that the evidence of SP7 showed that he was abducted and wrongfully detained by the appellants. Further, the evidence of SP7 and the investigating officer, SP10 showed that the money of RM40,000 which was paid to the appellants was "kowtim" money and not ransom money.

Our Decision

[16] Having heard the appeal, we found no merit on the grounds raised by the appellants before us. We, therefore, unanimously dismissed the appeal and affirmed the conviction and sentence imposed by the High Court. We now give our reasons.

[17] The first, second and third appellants were jointly charged with intent to hold SP7 for ransom, wrongfully restraining (menahan) SP7 by way of abducting him (dengan cara melarikan secara salah) in furtherance of common intention, an offence under s. 3(1) of the Act read with s. 34 of the Penal Code. The charge in the instant case is not defective in law as the phrase "dengan cara melarikan secara salah" is merely to explain or provide particulars of the wrongful act of "restrain" ("menahan"). The appellants were represented by learned counsel and they were neither misled nor prejudiced and no miscarriage of justice had been occasioned against the appellants.

[18] It is undeniable that there were discrepancies and/or inconsistencies in the evidence of SP7 pertaining to whether his hands were handcuffed; whether SP7 checked-in and registered his name at Hotel Histana, Klang and whether he sent sms to his brother, SP6 that he required RM50,000 or else he would be handed over to Bukit Aman. This is a question of credibility and reliability of SP7 as a prosecution witness. Learned counsel for second and third appellants submitted that the evidence of SP7 should not be relied and acted upon and ought to be rejected. The principle of law pertaining to assessment of a witness evidence may be seen in the case of *Lee Kwai Heong & Anor v. PP* [2006] 1 CLJ 1043; [2006] 2 MLJ 528 wherein the Court of Appeal stated the legal principle as follows:

> [16] ... we are of the view that it is a settled principle of law that "where the judge at the trial has come to a conclusion upon the question which of the witness, whom he has seen and heard, are trustworthy and which

A are not, he is normally in better position to judge of this matter than the appellate tribunal can be; and the appellate tribunal will generally defer to the conclusion which the trial judge has formed" and if an appeal is "from the decision of a trial judge based on his opinion of the trustworthiness of witnesses whom he has seen", an appellate court "must, in order to reverse, not merely entertain doubts whether the decision below is right, B but be convinced that it is wrong" (see *Powell and Wife v. Streatham Manor Nursing Home* [1935] AC 243; *AD Caldeira v. FA Gray* [1936] MLJ 137 (PC); *Loh Shak Mow v. Public Prosecutor* [1987] 1 MLJ 362; [1986] SLR 358). And in order to be convinced that the decision of a trial judge is wrong, an appellate court has a duty "to check by critical examination of the whole of the evidence the trial judge's conclusion as to the truthfulness of that C witness". Some of the matters to consider are:

(i) whether the witness's story is inherently "consistent with the facts and circumstances alleged therein" and which may gain weight by other factors;

D (ii) "corroboration by other witnesses will strengthen it;

(iii) credible extrinsic circumstantial evidence will do the same; and

(iv) lastly the demeanour and tone in which the witness gives evidence will add to fortify (if favourable) the inherent probability of the story but the last named is the least weighty element in the credibility of a E story (see *Abraham Ho Ah Loke v. William Manson-Hing* [1949] MLJ 37).

[19] The Court of Appeal case of *Sabarudin Non v. PP & Other Appeals* [2005] 1 CLJ 466; [2005] 4 MLJ 37 also addressed the issue of assessing the evidence and credibility of a witness (per Gopal Sri Ram JCA at p 45):

F Based on the submissions of counsel before us the question is whether the learned judge properly evaluated PW34's evidence. In holding PW34 to be a credible witness the learned judge took into account the whole of that witness' evidence and tested it against the probabilities of the case. We find this approach to accord with the general principles that courts have laid down for themselves in the judicial appreciation of oral G evidence. Thus, in *Tengku Mahmood v. Public Prosecutor* [1974] 1 MLJ 110 where Raja Azlan Shah FJ said that:

> a judge of fact should always test the complainant's evidence against the totality of his evidence and the probabilities of the case. Failure to do so does amount, in my view, to a misdirection …

H **[20]** In the case of *PP v. Datuk Haji Harun Haji Idris (No 2)* [1976] 1 LNS 184; [1977] 1 MLJ 15, Raja Azlan Shah (as His Majesty then was) had this to say on witnesses discrepancies:

In this case different witnesses have testified to different parts of what had happened or what had been said and also there are, in the evidence I of the witnesses for the prosecution, some discrepancies, as would be expected of witnesses giving their recollections of a series of events that

took place in 1971-1973. In my opinion discrepancies there will always be, because in the circumstances in which the events happened, every witness does not remember the same thing and he does not remember accurately every single thing that happened. It may be open to criticism, or it might be better if they took down a notebook and wrote down every single thing that happened and every single thing that was said. But they did not know that they are going to be witnesses at this trial. I shall be almost inclined to think that if there are no discrepancies, it might be suggested that they have concocted their accounts of what had happened or what had been said because their versions are too consistent. The question is whether the existence of certain discrepancies is sufficient to destroy their credibility. There is no rule of law that the testimony of a witness must either be believed in its entirety or not at all. A court is fully competent, for good and cogent reasons, to accept one part of the testimony of a witness and to reject the other. It is, therefore, necessary to scrutinise each evidence very carefully as this involves the question of weight to be given to certain evidence in particular circumstances.

[21] Having considered the evidence adduced by the prosecution in totality, including the discrepancies and inconsistencies in the evidence of SP7 on a maximum basis, the learned Judicial Commissioner found SP7's evidence to be credible and believable. The discrepancies in the evidence of SP7 were not material or crucial which require us to reject his evidence *in toto*.

[22] Now, let us re-visit the abduction episode to see whether SP7 was wrongfully restrained or whether he was a free man. On the day in question, SP7 was about to enter his motorcar - a Gen 2. Suddenly, a Honda Civic motorcar blocked SP7 from behind. There were three persons in the Honda Civic - the first, second and third appellants. The second and third appellants rushed out from the Honda Civic aggressively and demanded SP7 to open the door of the Gen 2. Upon opening its door, a police authority card was flashed out and SP7 was handcuffed by the second appellant. The second and third appellants pushed SP7 into the backseat of his Gen 2. The second appellant drove away the motorcar, whilst the third appellant was together with SP7 at the backseat. SP7 was in fear and helpless. His hands were handcuffed. In other words, his liberty had been wrongfully restrained (see pp. 57 to 58 of the appeal record vol. 1).

[23] While in the hotel at Klang, however, SP7 was not handcuffed. He slept on the sofa and did not know what was happening. (See p. 73 of the record of appeal vol. 1). SP7 did not run away or shouted for help as SP7 honestly believed that the appellants were police personnel. (See p. 75 of the appeal record vol. 1].

[24] On the next day, at about 10.45am, SP7 was taken out in the car to look for "air daun ketum" (denied by SP7) and finally came to a restaurant where there were many customers in the said restaurant. SP7's hands were

not in handcuff. Although he was not restrained, SP7 did not escape as he was under the impression that the appellants were police officers (see p. 87 of the appeal record vol. 1).

[25] As can be seen, while at the hotel and the restaurant, though SP7 was not in handcuff, he dared not escape, as he was in constant fear of the appellants. In his judgment, the Judicial Commissioner wrote at p. 312, para. 24 of appeal record vol. 2 as follows:

> Keterangan SP7 telah membuktikan bahawa dia diculik dan dikenakan tanahan salah oleh ketiga-tiga OKT. Keterangan SP7 bahawa dia dipaksa masuk ke kereta oleh OKT kedua dan OKT ketiga ketika dia berada di depat Hotel Akasia di Bedong dan selepas itu dipaksa masuk ke kereta, tangan OKT telah digari tidaklah dicabar.
>
> Walau bagaimanapun, keterangan SP7 menunjukkan dalam perjalanan ke Klang gari telah dibuka dan ketika berada di dalam bilik hotel tersebut juga, OKT-OKT tidak menggari SP7. Walau bagaimanapun dari keterangan SP7 jelas menunjukkan dia tidak bebas keluar dari kereta tersebut dan juga tidak bebas keluar dari bilik tersebut mengikut kemahuannya. Keterangan ini tidak menunjukkan SP7 tidak ditahan secara salah oleh ketiga-tiga OKT.

[26] On the issue of "kowtim" money, according to SP10, it was a Chinese word which means "nak settle". SP1 went on to explain "kowtim jumlah yang diminta supaya tidak diambil tindakan pada mangsa". (See p. 107 of appeal record vol. 1).

[27] "Kowtim" ordinarily refers to a favour or money paid to a person in authority in return for not taking action against an offender who has committed an offence. In this case, the appellants alleged that the drugs, Eramine 5 was found in SP7's car, which he denied. However, no such drugs were shown to SP7 to substantiate the appellants' allegation. No police report was lodged on the seizure of the drugs, Eramine 5. Therefore, SP7 was not proved to have committed any criminal offence which warranted a settlement or kowtim.

[28] The word "kowtim" was first suggested by one of the appellants who gave an ultimatum to SP7 whether he chose to be taken to Bukit Aman or to settle the case, which means "kowtim". SP7 was in a daze (bingung) and he echoed the word "kowtim" thereafter like a parrot. SP7 did not understand the meaning of "kowtim". The appellant requested SP7 to call his brother which he did. This evidence is recorded at p. 59 of the appeal record vol. 1 as follows:

> Q: Semasa dalam bilik apa yang dilakukan kepada kamu?
>
> A: Lelaki yang berkulit hitam mengaku dirinya Tuan mengatakan kepada saya dia jumpa 3 kotak Five dalam kereta saya. Lelaki berbadan besar berkata nak bawa pergi Bukit Aman atau hendak kowtim. Selepas itu saya bingung dan terus kata kowtim. Depa suruh telefon abang dan saya telefon abang.

[29] In dismissing the appellants' argument of "kowtim money", the trial judge found that the money demanded by the appellants to SP6 and SP8 was ransom money for the release of SP7 from the appellants' captivity. It was not "kowtim money" even though SP7 referred to the money as "kowtim money", after the term was suggested to him by one of the appellants. The term "kowtim money" cannot exonerate the appellants from the crime of abduction for ransom. The trial judge wrote at pp. 314 to 315 of the record of appeal vol. 2 as follows:

> Saya juga mendapati wang yang diminta oleh OKT-OKT untuk dibayar oleh SP6 dan SP8 adalah wang tebusan untuk membebaskan SP7 dari tahanan ketiga-tiga OKT. Walaupun tidak dapat dinafikan SP7 ada menggunakan perkataan kowtim namun ini tidaklah dapat menunjukkan bahawa wang yang diminta tersebut bukanlah wang tebusan. SP7 sendiri menyatakan dia sebenarnya tidak faham maksud kowtim yang dikatakan telah dituturkan itu.
>
> Dalam kes ini terdapat keterangan yang menunjukkan OKT-OKT ada menuturkan perkataan yang membayangkan SP6 dan SP8 tidak akan dapat berjumpa dengan SP7 jika wang yang diminta tidak dibayar.
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> Fakta juga menunjukkan SP6 telah memastikan SP7 bukan ditahan oleh anggota polis Bukit Aman dan tidak timbul soal untuk kowtim dengan mereka untuk tidak membawa SP7 ke Bukit Aman untuk tindakan lanjut. Dengan mempertimbangkan keseluruhan keterangan saya mendapati wang yang diminta dari SP6 dan kemudiannya telah dibayar melalui SP8 adalah wang tebusan bagi membebaskan SP7 dari tahanan.

[30] Nothing in the definition of "ransom" in s. 2 of the Act excludes kowtim money from qualifying as payment of ransom. The appellants' act or conduct still falls squarely within s. 3(1) of the Act; see *PP v. Selvarajah s/o Satippan* [2004] 3 SLR 615.

[31] Finally, we found no merit in learned counsel for the third appellant's argument that the third appellant did not commit wrongful restraint on SP7 as he was a serving police officer who has the authority to detain a person under the law. Despite being a serving police officer, the third appellant cannot be clothed with authority as he and his comrades had committed the crime of abduction of SP7 for ransom in furtherance of their common intention under s. 34 of the Penal Code. Furthermore, the first and second appellants were civilians who impersonated themselves as police officers.

[32] Having considered the factual matrix in this case, we were of the view that the convictions against the first, second and third appellants were safe. In the circumstances, we unanimously dismissed the appeal. We affirmed the conviction and sentence by the High Court.